

## AMENDMENT NO. 2 AND RENEWAL of Professional Services Agreement

### HMS Ferries, Inc.

This Amendment (“**Amendment No. 2**”) and Renewal is made by and between **HMS Ferries, Inc.** (“**SERVICES PROVIDER**”) and the **Central Oklahoma Transportation and Parking Authority** (“**COTPA**”) (“**CONTRACTING ENTITY**”), a public trust organized under the laws of the State of Oklahoma, (collectively, the “**Parties**”).

### WITNESSETH

**WHEREAS**, on December 7, 2018, the **Parties** entered into a professional services agreement for marine management services, vessel operations, vessel maintenance, system management, ticket and charter sales, and providing personnel for safe ferry operations; and

**WHEREAS**, the initial term of the Agreement between the Parties was for six (6) years beginning on January 1, 2019 and ending on December 31, 2024, and provided for one renewal for five (5) years; and

**WHEREAS**, the Parties wish to renew the Agreement for five (5) years beginning on January 1, 2025; and

**NOW, THEREFORE**, the Parties hereby mutually agree as follows:

### Article 1 PURPOSE AND SCOPE OF AGREEMENT

**1.1 Purpose.** The purpose of this Agreement is for **SERVICES PROVIDER** to provide **COTPA** with the services described in this Agreement in accordance with the terms of this Agreement.

### 1.2 Scope of Agreement.

- A. This document, together with the following attachments, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, either written or oral.
- B. In the event of an inconsistency between provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) Agreement articles, (2) general instructions and requirements for **SERVICE PROVIDER**, (3) Agreement instructions, and (4) other references.
- C. The captions, headings and titles in this Agreement are solely for convenience of reference and shall not affect its interpretation. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

All terms and words used in this Agreement, regardless of the number or gender, in which they are used, shall be deemed to include any other number and any other gender as the content may require.

- D. The following attachments are incorporated in and made a part of this Agreement as if fully set out herein:

**Attachment A** (Contractual Forms, Non-Collusion Affidavit, Non-Discrimination Statement)

**Attachment B** (Federal Clauses)

**Attachment C** (Certificate of Insurance)

**Attachment D** (Schedule of Daily Ferry Services)

**Attachment E** (Cleaning Standards)

**Attachment F** (Vessel Maintenance Schedule)

**Attachment G** (Vessel Description)

**Attachment H** (Description and Diagram of Landings)

- E. If there is a conflict in language, terms, conditions, or provisions, between the text of this document and any language, term, condition, or provision in any attachment, then the text of this document shall govern and control.

**1.3 Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following words, terms and abbreviations shall have the following meanings:

- A. Marine Management Services are defined as all required operational, management, and oversight activities to provide public ferry service as defined by the Federal Transit Administration and applicable regulations.
- B. Vessel- Landings- are defined as the areas identified and described in Attachment A
- C. Site Office is defined as a location selected by CONTRACTING ENTITY for the SERVICE PROVIDER's use to provide the services outlined in this Agreement.

## **Article 2 RENEWAL DATE, TERM, AND AMENDMENT**

**2.1 Renewal Date and Term.** This Agreement shall become effective upon execution by the last party hereto ("Effective Date") and shall be in effect from January 1, 2025 to January 1, 2030.

**2.2 Amendments.** This Agreement may not be modified, amended, altered, or supplemented except by an instrument in writing signed by both Parties hereto.

## **Article 3 SERVICES**

**3.1 Performance.** SERVICES PROVIDER will comply with all Terms and Conditions set forth in this Agreement. SERVICES PROVIDER will perform all Services and Deliverables pursuant to this Agreement in accordance with established deadlines or otherwise in a timely manner.

**3.2 Standard of Care.** SERVICES PROVIDER will operate the services under this Agreement in accordance with other professionals in the field of maritime management services and in alignment with COTPA's other public transportation service modes to ensure a consistent customer experience.

**3.3 Responsibility of SERVICES PROVIDER.** In addition to the obligations set forth in this Agreement, and subject to the terms and conditions herein, SERVICES PROVIDER shall provide public ferry services with the following obligations:

- A. Location of Services. SERVICES PROVIDER shall utilize vessels to transport passengers along the seven-mile stretch of the Oklahoma River between the Native American Cultural Center and the Aero-Meridian Hospitality District.
- B. Coordination and Scheduling of Ferry Services. SERVICES PROVIDER shall provide daily ferry services as outlined in Attachment D. Written approval of COTPA is required if there are changes or modifications to the daily schedule. aspects of the service's operations at any time.
- C. Control and Supervision of Ferry Services. The SERVICES PROVIDER shall supply trained and qualified personnel to maintain the vessels and manage the daily operations of the ferry services. COTPA shall not be obligated to provide staffing or manage any aspect of the daily operations of the Ferry Service, except for marketing, promotion, and ensuring contract compliance. However, COTPA reserves the right to inspect, observe, and offer feedback on all
- D. Ticket Sales and Fare Collection. SERVICES PROVIDER shall conduct ticket sales and fare collection. Major credit cards and cash option shall be accepted.
- E. Notice of Accidents, Damages, Injuries, Claims or Lawsuits. SERVICES PROVIDER shall notify COTPA by telephone or text message of any major occurrence, such as a collision, grounding, major mechanical failure, or major medical emergency. In addition, SERVICES PROVIDER shall:
  - a. Reasonably record all reports of accidents, injuries, damages, lawsuits, or claims related to persons, property, vessels, or landings;
  - b. Conduct investigations or inspections thereof;
  - c. Retain records for documentation; and
  - d. Notify COTPA within twenty-four (24) hours.
- F. Cleaning. SERVICES PROVIDER shall maintain the cleanliness of the following areas: landings, vessels, ramps, booths, ferry office, maintenance facilities and passenger queuing areas. At all times the areas shall be neat, orderly, free of litter, oil, dust, and according to industry standards. See Attachment E-F
- G. Vessel Maintenance and Repair. SERVICES PROVIDER shall:
  - a. Conduct regular maintenance and repairs on vessels that are predictable and do not exceed the amount of \$2,500.00.
    - i. Supply the labor or hire an outside sub-contractor to perform all regular maintenance and oversee all approved repairs.
    - ii. Cost of the outside sub-contractor to perform the repair service at no higher cost than market rate.
  - b. Obtain three (3) bids for a repair that is over \$2,500.00 but less than \$5,000.00.
    - i. COTPA may review the bids prior to the award.

- ii. If a preferred vendor is selected by COTPA, three (3) bids will not be required.
    - iii. Best efforts shall be made to find three (3) bids as it is acknowledged that marine vendors in Oklahoma City are limited.
  - c. If a repair is over \$5,000.00, SERVICES PROVIDER shall promptly contact COTPA and COTPA shall review the scope of the work to see which procurement procedures are required.
  - d. If SERVICES PROVIDER reasonably determines that there is an emergency involving the safety, welfare, and protection of the vessels, landings, the general public, SERVICES PROVIDER'S staff, third parties, or the environment, an emergency may be declared by the administrator of COTPA or designee. SERVICES PROVIDER shall have the right to take all necessary actions and expend funds in excess of \$5,000.00 to remedy the emergency.
    - i. SERVICES PROVIDER shall notify COTPA of the emergency expenditures no later than the next working day following the emergency.
    - ii. COTPA shall make its own determination regarding the need for repairs.
  - e. Not make modifications to the vessels without the consent of the administrator of COTPA or designee.
  - f. Repairs required due to negligence of the SERVICES PROVIDER are not paid by COTPA.
  - g. The vessels may be removed from service ninety (90) days per year for annual maintenance and winter lay-up period at the end of each season. The service provider shall abide by the Vessel Maintenance Schedule. See Attachment F.
- H. Inspections. SERVICES PROVIDER shall arrange to have inspections of the vessels, such as topside and hull inspections, to be performed as needed and at the expense of COTPA. The Parties will mutually agree on a third-party agency or certified Marine Surveyor to inspect the vessels for structural soundness and operational safety.
- I. Haul Out. Upon approval of COTPA, if a vessel is required to be hauled out, SERVICES PROVIDER shall coordinate transportation to the haul out facility, identify necessary repairs, schedule inspection, have parts or supplies approved for Subchapter T or T-Class vessels, and assist in job costing when possible. By mutual agreement between the Parties, SERVICES PROVIDER may assist with the haul out and repair.
- J. Uniforms and Staff Appearance. SERVICES PROVIDER shall provide at the start of the operating season uniforms for all staff members that bear the "HMS Ferries" or "HMS Global Maritime" or "City Ferry" or "Oklahoma River Cruises" logos. Staff members shall wear the uniforms while on duty and maintain a neat and orderly appearance. If COTPA observes conduct that does not adhere to this section, COTPA will notify the SERVICES PROVIDER through the general manager, in writing, and SERVICES PROVIDER will take appropriate actions to correct.
- K. Compliance with Laws and Regulations. SERVICES PROVIDER shall comply with all provisions of federal, state, municipal, and local laws, ordinances, rules, regulations and orders applicable to its performance and obligations under this Agreement. Any additional cost of said compliance shall be paid by COTPA. COTPA
- L. Fuel. SERVICES PROVIDER shall arrange for the delivery of fuel for vessels and notify COTPA at least twenty-four (24) hours in advance of delivery. COTPA shall have the right to use an existing fuel vendor.

- M. Waste-Disposal. SERVICES PROVIDER shall comply with all applicable federal, state, and local laws for disposing of fuel, trash, liquid and solid waste in a safe and environmentally sound manner.
- N. Customer Service. SERVICES PROVIDER shall answer phone calls, manage group, individual and specialty cruise reservations, and charters. The phone line shall be operated year-round. SERVICES PROVIDER shall employ at minimum a full-time general manager and administrative person to carry out these responsibilities. SERVICES PROVIDER shall also maintain superior customer service at all times, including servicing passengers, providing onboard concession sales, and coordinating and supporting hospitality partners. Customer service standards shall be satisfactory to COTPA.
- O. Industry Standards. SERVICES PROVIDER shall exercise best efforts to maintain industry standards and common marine practices and use reasonable care in operating vessels. If attention to the safety or efficiency of the vessels is required, SERVICES PROVIDER shall notify COTPA.
- P. Staff Recruitment and Training. SERVICES PROVIDER shall recruit and train all staff to be capable to perform the scope of work specified in this Agreement. COPTA may review training programs, recruitment, and hiring policies. *To the fullest extent permitted by law, mandatory drug testing of all "safety sensitive marine" staff prior to employment and during the course of employment shall be conducted.*
- Q. Customer Surveys. SERVICES PROVIDER shall conduct random surveys of ferry customers during the operating season, at a minimum of 2% of total public ferry riders per quarter. A quarterly report summarizing the results shall be submitted to COTPA.
- R. Reporting Requirements. SERVICES PROVIDER shall provide COTPA written reports of the following:
  - a. Monthly daily maintenance logs.
  - b. Monthly daily passenger logs.
  - c. Monthly reports of safety, customer service issues, mechanical problems, or issues with the vessels or landings, in a bulleted format.
  - d. Monthly reports on tickets sold, cash and ticket reconciliations.
  - e. Quarterly summary of ridership by category, including comparisons to prior years and marketing efforts.
- S. Charter Cruises. SERVICES PROVIDER shall provide staff to sell charters, coordinate events, dock site facility rentals, and to operate the vessels when placed in charter service.
- T. Vacancy. Upon the expiration or termination of this Agreement, SERVICES PROVIDER shall vacate the site office within ten (10) calendar days.

### **3.4 Responsibility of COTPA.**

- A. Vessels and Landings. COTPA shall provide the ready for service vessels and make available the landings to SERVICES PROVIDER. COTPA shall also provide:
  - a. Spare parts and inventory;
  - b. Tools required to maintain the vessels;
  - c. Shop facilities;
  - d. Landing facilities;
  - e. Fendering;
  - f. Ramps and gangways;
  - g. Lighting and handrails for docks and facilities; and

- h. Passenger loading zones, passenger shelters, parking, fencing, and other upland improvement.
- B. Site Office. COTPA shall provide, during the term of this Agreement, an office space for SERVICES PROVIDER.
- C. Ticket Kiosk, Sales and Fare Collection. Ticket booths and kiosk and phones and utilities for ticketing office provided by COTPA. Ticket prices established by COTPA and review with SERVICES PROVIDER annually.
- D. Cleaning. The costs for regular Cleaning and Maintenance shall be paid by COTPA
- E. Vessel Maintenance and Repair. COTPA shall be responsible for all repairs and maintenance to the vessels and landings except for damage caused as a result of Operator negligence.
  - a. Repairs for the landings will be paid by COTPA that exceed the regular maintenance.
  - b. Repairs includes annual overhauls and dry dockings as well as any capital improvements.
- F. Reimbursement. In the event SERVICES PROVIDER has expended funds on behalf of COTPA, COTPA will reimburse within thirty (30) days of receipt of invoice with documentation supporting the expenditures.
- G. Insurance. COTPA will obtain insurance for the landings and facilities.
- H. Haul Out. COTPA will pay for all costs associated with moving the Vessel to the haul out facility, for the Vessel haul out and all costs or repairs and / or modifications to the Vessels. These costs are not included in the base operating budget (Attachment 6)
- I. Uniforms. Cost of SERVICES PROVIDER's employee uniforms to be paid by COPTA.
- J. Compliance with Laws and Regulations. COTPA shall be responsible for compliance with and obtaining all Regulatory Certifications and approvals for the vessels and the terminal facilities. COTPA shall be responsible for all licenses and permits associated with onboard concession sales
- K. Fuel and Waste Disposal. COTPA shall pay for fuel and waste disposal.
- L. Charter Cruises. COTPA shall set the charter fees
- M. Dockside Utilities COTPA is responsible for expenses associated with telephone service at the Ticket office or in the ticket booths. Additionally, COTPA shall be responsible for costs associated with providing electrical service, water and sewage disposal. All estimated expenses are to be included in the operating budget.
- N. Marketing COTPA will be responsible for marketing the Ferry Service. Operator will assist in the development of a marketing plan as needed or requested. Operator may conduct promotions or events for marketing with pre-approval from COTPA. All marketing expenses shall be paid by COTPA. COTPA shall be responsible for the execution and implementation of the Marketing Plan. All costs for the Marketing Plan will be the responsibility of COPTA. Operator will assist in the development of the Marketing Plan if requested by COPTA. The Marketing Plan may include the following elements:
  - a. Rack Cards
  - b. Website Development & Maintenance
  - c. Logo
  - d. Media Ads

## **Article 4 OPERATING FUNDS AND EXPENSES**

**4.1 Accounting and Record Keeping.** SERVICES PROVIDER shall engage, at its sole cost and expense, an experienced Certified Public Accounting Operator to review SERVICES PROVIDER's books and records in connection with this Agreement.

- A. SERVICES PROVIDER shall maintain true and correct records of all costs and expenditures incurred as well as other necessary data for the settlement of accounts.
- B. Maintenance of records shall be in accordance with generally accepted accounting principles.
- C. During the term of this Agreement, COTPA shall have access, during normal business hours, to all records and documents of SERVICES PROVIDER, which relate to this Agreement.
- D. COTPA and authorized representatives may inspect and audit all data and records relating to the Vessel and funds collected or expended by SERVICES PROVIDER on behalf of COTPA. COTPA shall not exercise this right for the purpose of ascertaining financial or operational information for use in negotiating an extension to this Agreement or a new Agreement for similar services.
- E. SERVICES PROVIDER shall maintain records for a minimum of three (3) years after the termination of this Agreement, unless a long period is required by applicable law or regulation.
- F. In the event SERVICES PROVIDER wishes to dispose of records after the requisite time, COTPA shall have the opportunity to take possession of the records.

**4.2 Annual Expense Operating Budget.** COTPA shall establish the Annual Expense Operating Budget (hereinafter "Budget") annually and it shall serve as a guide for anticipated costs. The Budget shall be incorporated into this Agreement by written notification to SERVICES PROVIDER.

- A. The Administrator of COTPA shall approve all expenses listed in the Budget.
- B. SERVICES PROVIDER shall notify COTPA when expenses will be exceeded.
- C. Any additional operating expenses shall be approved by the Administrator of COTPA prior to expending funds.

**4.2 Reimbursement.** COTPA shall reimburse SERVICES PROVIDER for all operating expenses that are expended on COTPA's behalf as outlined in Attachment H.

- A. Payment by COTPA of any statement or cash submitted to SERVICES PROVIDER shall not prejudice the right of COTPA to later protest or question the correctness of the payment.

## **Article 5 COMPENSATION**

### **5.1 Compensation.**

- A. Annual Management Fee. As consideration for the operation of vessels and fulfillment of all obligations called out in this agreement, SERVICES PROVIDER received in 2019 an Annual Management Fee of \$180,000 with a 2% increase per year beginning in contract year 2020 and for the duration of the contract and subsequent renewals. For this Renewal, SERVICES PROVIDER shall receive an Annual Management fee of \$202,709.24

beginning in contract year 2025 and receive a 2% increase per year thereafter. It is understood and agreed that SERVICES PROVIDER shall be entitled to receive the Management Fee without deduction or other charge of any kind.

- B. Annual Contract Fee. COTPA shall pay the SERVICES PROVIDER an Annual Contract Fee for Ferry operations and for services rendered under this Agreement, which shall include the Management Fee and reimbursement for expenditures made by the Operator on behalf of the COTPA for management, operation and maintenance of the vessels. For year one of the contract the Contract Fee shall be Eight Hundred Thirty-Seven Thousand Four Hundred Seventy-Four Dollars and Seventy Cents (\$837,474.70) payable in twelve (12) equal monthly installments by ACH no later than the 10th business day of the month.
- a. Subsequent increases in the Annual Contract Fee will be approved by COTPA.
- C. Settlement. Settlement is a review of actual expenses incurred by SERVICES PROVIDER, compared to the approved Annual Contract Fee, whereby both parties agree to be made whole.
- a. If the settlement process results in a net positive variance, the SERVICES PROVIDER shall refund COTPA the amount of savings from the Annual Contract Fee payments.
- b. If the process results in a net negative variance, COTPA shall fund this amount to cover the SERVICES PROVIDER's additional operating expenses.
- c. The settlement process shall occur once each year, following each twelve (12) months of operation. Settlement will take place within 45 days of the settlement period in review. The settlement process will also occur if this agreement is terminated for any reason.
- d. After all expenses are reviewed and audited for accuracy, a net settlement will occur to determine a total "net settlement" which includes all expense categories compared to budgeted totals. The net settlement represents the total of the SERVICES PROVIDER's actual expenses compared to the Annual Contract Fee. Settlement of any under or overages will be paid in the form of a check or ACH to the appropriate party due the settlement amount.
- e. The Annual Management Fee shall not be impacted by the Year End Settlement process.

## **Article 6 TERMINATION**

### **6.1 Termination for Convenience.**

- A. COTPA may terminate this Agreement, in whole or in part, with ninety (90) days written notice to SERVICES PROVIDER when it is in COTPA's best interest.
- B. SERVICES PROVIDER will promptly submit its termination claim to COTPA to be paid.
- C. COTPA will pay SERVICES PROVIDER startup and mobilization costs, agreement closeout costs, and profit on work performed up to the time of termination.
- D. SERVICES PROVIDER will account for and dispose of any COTPA property in the manner COTPA directs.

### **6.2 Termination for Cause and Opportunity to Cure.**

- A. COTPA may terminate this Agreement for cause if SERVICES PROVIDER or any of its employees, agents, or subcontractors (if any):
  - a. Breach any terms or conditions of this Agreement;
  - b. Fail or are unable to perform any of the obligations under this Agreement; or
  - c. Act in violation of Oklahoma law.
- B. SERVICES PROVIDER shall have thirty (30) days to cure following COTPA's written notice of default. The written notice will state the time period in which to cure are permitted and other appropriate conditions.
- C. COTPA shall have the right to terminate the Agreement by serving a notice of termination without any further obligation if SERVICES PROVIDER fails to remedy to COTPA's satisfaction the breach or default within thirty (30) days after receipt of the written notice.
- D. A termination for breach or default shall not preclude COTPA from pursuing all available remedies by law against SERVICES PROVIDER.
- E. COTPA shall have the right to perform all or part of the ferry services performed by SERVICES PROVIDER in the event of termination for breach or default.

### **6.3 SERVICES PROVIDER'S Ability to Terminate.**

- A. SERVICES PROVIDER shall have the right to terminate with sixty (60) days written notice except in the event of a failure by COTPA to timely make payment or reimburse.

### **6.4 Waiver of Remedies for any Breach.**

- A. COTPA may elect to waive its remedies for breach, and such waiver shall not limit COTPA's remedies for any successive breach for any terms or conditions of this Agreement.

## **Article 7 LIABILITY AND IDEMNIFICATION**

**7.1 Indemnification by SERVICES PROVIDER.** SERVICES PROVIDER shall indemnify and hold COTPA and its successors, assigns, commissioners, directors, officers, employees and agents, in both their official and individual capacities, harmless against any and all claims arising out of the acts and/or omissions of SERVICES PROVIDER, its employees, agents, or SERVICES PROVIDER'S negligence, vicarious liability and strict liability in tort, and for all expenses reasonably incurred by COTPA in the defense, settlement or satisfaction thereof, including reasonable attorneys' fees arising in connection therewith provided that the operators indemnity obligation hereunder shall be limited to claims and or liabilities to the extent covered by the insurances.

- A. SERVICES PROVIDER shall have no obligation to indemnify hereunder to the extent that a claim arises from a failure to make a vessel repair if SERVICES PROVIDER had notified COTPA and COTPA determined that the repair was not required.

**7.2 Survival and Scope of Indemnity.** Termination or expiration of this Agreement shall not release SERVICES PROVIDER from its respective obligations hereunder for a period of ninety (90) days and for that period neither the enumeration in this Agreement of particular risks assumed by SERVICES PROVIDER or of particular claims for which it is responsible shall be deemed:

- 1. To limit the effect of the provisions of this section or of any other sections of this Agreement relating to such risks or claims; or

2. To limit the risks, which SERVICES PROVIDER shall have been deemed to assume, or the claims for which it would be responsible in the absence of such enumerations.

**7.3 Indemnification by COTPA.** COTPA shall indemnify and hold SERVICES PROVIDER and its successors, assigns, directors, officers, employees and agents, in both their official and individual capacities, harmless against any and all claims arising out of the acts and/or omissions of COTPA, its employees, agents, or SERVICES PROVIDER'S negligence, vicarious liability and strict liability in tort, and for all expenses reasonably incurred by SERVICES PROVIDER in the defense, settlement or satisfaction thereof, including reasonable attorneys' fees arising in connection therewith provided that the COTPA indemnity obligation hereunder shall be limited to the Governmental Tort Claims Act (51 O.S. § 151, et seq.).

**7.4 Prohibition against Liens.** Neither Operator nor the captain or crew of the Vessel(s) shall have the right, power or authority to create, incur or permit any lien of whatsoever kind or nature to be placed or imposed on the Vessel(s), except that which may be imposed by law for necessities or true salvage rendered by persons other than and not affiliated with Operator.

- A. Operator shall defend, indemnify and hold COTPA and its successors, assigns commissioners, directors, officers, employees and agents, in both their official and individual capacities, harmless, from and against any and all liens, claims or liabilities of any nature asserted against the Vessel(s) that may arise from or out of any acts or omissions of Operator. Should any process issue against the Vessel(s) or should any such lien or claim be asserted against the Vessel(s), Operator shall forthwith cause the Vessel to be released from the lien and the lien or liens to be discharged. Notwithstanding the foregoing, Operator shall have no duty to defend, indemnify and hold COTPA harmless with respect to any and all liens, claims or liabilities asserted against the Vessel(s) that may arise from or out of any acts or omissions of COTPA.

**7.5 Right to Intervene in Suits and Actions.** COTPA hereby reserves the right, but not the obligation, to intervene in any suit, action or proceeding involving the Ferry Services or any provision of this Agreement, at COTPA's expense, provided, however, that if SERVICES PROVIDER fails to defend COTPA when required under this Agreement, and without limiting any other right or remedies of COTPA, Operator shall pay all expenses reasonably incurred by COTPA in defending itself or themselves with regard to any and all such actions, suits or proceedings.

## **Article 8 INSURANCE**

**8.1 Insurance Requirements.** SERVICES PROVIDER shall procure and maintain insurance at its own expense against claims which may arise from or in connection with the performance of the services hereunder by SERVICES PROVIDER, its officers, employees, agents, or subcontractors.

**8.2 Minimum Coverage.** SERVICES PROVIDER shall comply with the provisions of the Longshore and Harbor Worker's Compensation Act. Coverage shall include the following policies with limits at least as broad as that set forth:

- A. Worker's Compensation Insurance and Employer's Liability Insurance. Worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's

liability insurance in an amount not less than one-million dollars (\$1,000,000) per occurrence for bodily injury or disease.

- B. Commercial General Liability Insurance. Commercial general liability insurance coverage, including claims for products and completed operations, property damage, bodily injury and personal and advertising injury, with limits not less than one-million dollars (\$1,000,000) per occurrence.
- C. Vessel Pollution Insurance. Amount not less than one-million dollars (\$1,000,000).
- D. Hull and Machinery Insurance. Risk and physical damage to the vessel. Amount not less than one-million dollars (\$1,000,000)
- E. Umbrella Policy. Excess coverage and or umbrella policy of at least nine-million dollars (\$9,000,000).
- F. Protection and Indemnity Insurance. Collision, damage, fines and penalties, other liabilities; \$1,000,000

**8.3 Duration of Coverage.** All insurance required under this Agreement shall be procured and maintained in full force and effect:

- A. Prior to and as a condition of approval of this Agreement; and
- B. For the duration of this Agreement.

**8.4 Additional Insureds.** All insurance (except worker's compensation and employer's liability policies) shall provide that COTPA, The City of Oklahoma City, and Union Pacific Railroad Company are named additional insureds without reservation or restriction.

**8.5 Certifications and Endorsements.** SERVICES PROVIDER shall provide COTPA with certificates of insurance and endorsement pages evidencing compliance with the terms of this Agreement prior to and as a condition of approval of this Agreement and on a timely basis upon request by COTPA for the duration of this Agreement. Certificates of insurance will list COTPA as certificate holders and reflect in the "DESCRIPTION OF OPERATIONS" field: "Additional insured(s) on the listed policies are those required in the contract."

**8.6 Confirmation Authority.** SERVICES PROVIDER authorizes COTPA to confirm SERVICES PROVIDER's insurance compliance with its insurance agents, brokers, surety, and carriers.

**8.7 Authorized Companies.** All insurance must be from responsible insurance companies which are licensed to transact business in the state of Oklahoma and are acceptable to COTPA. The insurance policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of the State of Oklahoma.

**8.8 Primary.** All insurance coverage of SERVICES PROVIDER shall be primary to any insurance or self-insurance program carried by COTPA.

**8.9 Deductibles.** All policies must be fully insured with any single policy deductible not exceeding twenty-five thousand dollars (\$25,000). All deductibles must be declared on the certificate of insurance. If no deductible is declared, SERVICES PROVIDER is affirming a deductible does not exist and thus a deductible is not approved or accepted. If SERVICES PROVIDER's deductible is different than declared, then COTPA will hold an equal amount from pay claims until COTPA has a retainage sufficient to cover the deductible.

**8.10 Occurrence Policies.** All policies shall be in the form of "occurrence" coverage.

**8.11 General Aggregate.** Should any of the insurance required under this Agreement be provided under a form of coverage that includes a general aggregate limit, either the general aggregate limit must apply separately to this Agreement, or the general aggregate limit shall be twice the required occurrence limits.

**8.12 Subrogation Waived.** SERVICES PROVIDER hereby grants to COTPA a waiver of any right to subrogation which any insurer of said SERVICES PROVIDER may acquire against COTPA by virtue of the payment of any loss under such insurance.

**8.13 Severability of Interest.** Except with respect to limits of insurance, all liability policies must provide that with respect to claims involving any insured hereunder, each such interest shall be deemed separate for any and all other interest herein and coverage shall apply as though each such interest was separately insured.

**8.14 Subcontractors.** In case any work is subcontracted and prior to commencement of subcontractor's work, SERVICES PROVIDER shall require and verify the subcontractor maintains insurance coverage at least as broad as that required of SERVICES PROVIDER here, unless subcontractor's employees are covered by SERVICES PROVIDER's insurance.

**8.15 Change or Cancellation.**

- A. SERVICES PROVIDER shall provide actual prior notice to COTPA of any change, reduction, lapse, suspension, cancellation, or termination of any insurance policy or coverage required by this Agreement and shall use all reasonable endeavors to do so at least thirty (30) days prior to such change, reduction, lapse, suspension, cancellation, or termination taking effect.
- B. The change, reduction, lapse, suspension, cancellation, or termination of any insurance policy or coverage required by this Agreement is a breach of this Agreement.
- C. If any insurance policy or coverage required by this Agreement is changed, reduced, lapsed, suspended, cancelled, or terminated for any reason during the term of this Agreement, COTPA may at its option suspend this Agreement until there is full compliance with the insurance terms and conditions or terminate this Agreement and seek damages for a breach of this Agreement.
- D. If any insurance policy or coverage required by this Agreement is changed, reduced, lapsed, suspended, cancelled, or terminated for any reason during the term of this

Agreement, SERVICES PROVIDER shall be fully responsible and liable for and COTPA may at its option withhold payment otherwise due SERVICES PROVIDER to pay any claim by COTPA brought on their own behalf or on behalf of another, for any loss, damages, costs, or expenses, including attorney fees, court costs, and administrative expenses, which would have been covered or assumed by the insurer had the changed, reduced, lapsed, suspended, cancelled, or terminated insurance policy or coverage been in effect without limitation as to the policy amount.

**8.16 Special Risks or Circumstances.** COTPA reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**8.17 COTPA.** COTPA shall provide all risk property insurance and comprehensive general liability insurance for all docks, landings, ramps, ticket booths, or kiosks, shop facilities, parking and queuing areas.

## **Article 9 DAMAGES**

**9.1 Consequential Damages.** Neither party shall be responsible for any indirect, consequential or special damages whatsoever (including without limitation business interruption, extra expense, loss of revenues or profits, loss of use of property, delay) arising out of or relating to the project, Operator's services and/or this Agreement, howsoever caused and regardless of whether the same results from the negligence of a party, breach of this Agreement or otherwise, and even if the possibility of such was or could have been foreseeable.

## **Article 10 ENVIRONMENTAL MATTERS**

**10.1 Environmental Matters.** SERVICES PROVIDER shall be solely liable and responsible for and shall assume the risk of any losses, damages, claims, actions, suits, costs and expenses incurred for noncompliance with any Requirement of Environmental Law or Adverse Environmental Condition (as those terms are defined below) arising out of the acts or omissions of negligence or willful misconduct of SERVICES PROVIDER, and its employees, in the performance of the services contemplated hereby, except to the extent resulting from acts or omissions of COTPA, its employees or agents, prior and subsequent to the execution of this Agreement, with the risk of any losses, damages, claims, actions, suits, costs and expenses arising from such acts or omissions of COTPA to be the sole liability and responsibility of COTPA. SERVICES PROVIDER's liability under this section shall be limited to the insurance limits and shall not, in any event survive beyond the term of this agreement.

A. Applicable definitions:

- a. "Adverse Environmental Condition" shall mean the disposal of any Solid Waste or Hazardous Waste at, on or beneath any of the real property owned, leased or used at any time by SERVICES PROVIDER in connection with the operation and maintenance of the ferry system ("Real Property"), an actual or threatened Release into the environment of Hazardous Substances at, onto or from the Real Property, the property of third parties, including that of any government body or into waters which requires containment, Cleanup, Removal, Remedial Response or Corrective Action under applicable federal, state or local law relating to public health and

welfare or to the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCAN), the Federal Water Pollution Control Act ("FWPCA"), and applicable state laws and local ordinances, as well as all rules, regulations and standards promulgated hereunder. The term shall include "Offsite Disposal."

- b. The terms "Hazardous Substances," "Release," "Response," "Removal" and "Remedial Action" shall have the meanings specified in CERCLA, except that the term "Hazardous Substances" shall include petroleum and petroleum products; the terms "Disposal," "Hazardous Waste," "Solid Waste" and "Corrective Action" shall have the meanings specified in RCRA, each (including regulations promulgated hereunder) as constituted on the date of this Agreement, provided that, to the extent that applicable state or local environmental laws establish a meaning for such terms which is broader than that specified in CERCLA or RCRA, such broader meaning shall apply.
- c. "Requirement of Environmental Law" shall mean the requirements of any federal, state or local statute, code, ordinance or regulations promulgated hereunder; and plans, orders, permits or decrees issued pursuant thereto relating to the generation, processing, treatment, storage, transportation, disposal or other handling of Solid Waste, Hazardous Wastes, or Hazardous Substances, pollution or protection of health and the environment including, without limitation, CERCLA (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §1801 et 51q.), RCRA (42 U.S.C. §6901 et seq.), FWPCA (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et m.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. §951 et seq.), each as amended or supplemented, and any other applicable federal, state and local laws and all regulations promulgated pursuant thereto.
- d. "Offsite Disposal" shall mean any Disposal by or on behalf of SERVICES PROVIDER at any location other than the approved landings, of any Solid Wastes, Hazardous Wastes, or Hazardous Substances generated, produced, handled, processed, stored, treated, recycled or transported by or on behalf of Operator which gives rise to any Cleanup, Removal, Remedial, Response or Corrective Action obligation, or responsibility or liability for cost for such actions under applicable federal, state or local law for Release or threatened Releases at or from the location where such Disposal occurred.

## Article 11 OTHER TERMS

**11.1 Proprietary/Confidential Information.** Neither party shall disclose any information or knowledge concerning an individual's medical records or testing results, all of which are deemed confidential information except as otherwise required by law. SERVICES PROVIDER shall use all data, information, and knowledge supplied by COTPA exclusively for the purposes of performing this Agreement. All data, information, and knowledge supplied by Operator shall be used by COTPA exclusively for the purposes of performing this Agreement.

- A. Open Records Request. Should an Open Records Request be presented to COTPA and/or CITY Of Oklahoma City requesting information SERVICES PROVIDER has identified as "Proprietary/Confidential," SERVICES PROVIDER will be responsible for defending their position if needed.

**11.2 Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma. Venue and jurisdiction for purposes of any litigation between the parties hereto shall be proper in the District Court of Oklahoma County and the federal courts of Oklahoma, and the parties hereby waive all defenses of venue and jurisdiction in connection with legal proceedings brought by either party against the other in such courts. By entering into this Agreement, except as expressly provided herein, COTPA does not consent, either expressly or impliedly, to the jurisdiction or application of any laws, regulations, procedures, or requirements of any governmental, quasi-governmental, or other political entity which would otherwise not be applicable to COTPA.

**11.3 No Assignment or Third-Party Beneficiaries.** Only upon the express written consent of COTPA may SERVICES PROVIDER assign and transfer any duties and rights under this Agreement, whether by assignment or novation. COTPA may, at its option, assign and transfer any and all duties and rights under this Agreement to another governmental entity. This Agreement shall be binding upon and inure to the benefit of the successors of the parties. Nothing contained in this Agreement is intended for the benefit of third persons.

**11.4 Materiality of Obligations/Covenant of Timely Performance.** The obligations of SERVICES PROVIDER under this Agreement for the timely initiation of the Ferry Services and the timely and faithful performance of all other obligations hereunder are material covenants. SERVICES PROVIDER hereby covenants and agrees that it will perform the services and other acts required of it under this Agreement within the times and to the standards of performance set forth in this Agreement, and SERVICES PROVIDER recognizes that such covenant and agreement form an essential inducement to COTPA to enter into this Agreement.

**11.5 Representations of SERVICES PROVIDER.** SERVICES PROVIDER hereby certifies that neither it nor any individual on SERVICES PROVIDER's Board of Directors has been indicted or convicted in any jurisdiction; or suspended or debarred or otherwise disqualified from entering into Agreements with any governmental agency; has had a Agreement terminated by any governmental agency for breach of Agreement or for any cause related directly or indirectly to indictment or conviction. This certification shall be deemed to include the officers and directors and to have been authorized by the respective board of directors of SERVICES PROVIDER. SERVICES PROVIDER hereby certifies that it has not made any offers or agreements or taken any other action with respect to COTPA's employees, former employees or immediate family member of same in order to enter into this Agreement.

**11.6 Commissions/Collusion.** No person or selling agency has been employed or retained by SERVICES PROVIDER to solicit or secure this Agreement on the understanding that a commission percentage, brokerage contingent or other fee will be payable to such person or selling agency. SERVICES PROVIDER's Proposal, on which the award of this Agreement was based, was prepared independently without collusion, consultation, communication or agreement, or for the purpose of restricting competition, as to any matter relating to such persons with any other SERVICES PROVIDER or with any competitor and the costs or prices quoted in the Proposal were not knowingly disclosed directly or indirectly, to any other competitor and no attempt was made by SERVICES PROVIDER to induce any other person, partnership or corporation to submit or not to submit a proposal to COTPA for the performance of the Ferry Services.

**11.7 Force Majeure.** The Parties agree that performance any of their respective obligations hereunder shall be extended if and to the extent that the performance thereof shall be prevented due to any strikes, severe weather or sea conditions, mechanical breakdowns, lockouts, civil commotion, warlike operations, invasions, rebellions, hostilities, military or usurped power, governmental regulations or controls, inability to obtain labor or materials despite due diligence, acts of God, or other causes beyond the reasonable control of the party whose performance is required. The party claiming the benefit of this section shall give prompt written notice thereof to the other party.

**11.8 Partial Invalidity.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

**11.9 Non-Waiver.** No waiver of any breach of this Agreement by either party shall be deemed to be a waiver of any other or any subsequent breach.

**11.10 Non-Discrimination.** SERVICES PROVIDER hereby covenants and agrees to and with COTPA that its operations and policies shall conform in all respects to the following:

- A. No person shall be deprived of the right to occupy or use any portion of the Vessel or the Landings by reason of race, sex, color, creed, national origin, disability or religion and;
- B. There shall not be affected or executed by SERVICES PROVIDER or anyone acting on its behalf, any agreement, lease or other instrument whereby the use or occupancy of the Landings, or any part thereof, is restricted upon the basis of race, sex, creed, color, national origin, disability or religion.

**11.11 Equal Employment Opportunity.** During the performance of this Agreement, SERVICES PROVIDER shall:

- B. Not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and shall take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or religion. Such action shall be taken with reference to, but not be limited to, recruitment, employment, job assignments, promotions, upgrading, demotions, transfers, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training;
- C. Post in conspicuous places, available to employees and applicants for employment, and such notices as requested by COTPA, setting forth the substance of the provisions set forth above; and
- D. State, in all solicitations or advertisements for employees placed by or on behalf of SERVICES PROVIDER, that all qualified applicants will be afforded equal employment opportunities without discrimination.

**11.12 Statement of Financial Assistance.** This project is available as a result of federal financial assistance provided under the provisions of the Federal transit laws codified at 48 U.S.C. 5301 et seq. The merchandise and or service described in this specification are to be purchased in large part with the assistance of Federal Grants from the Federal Transit Administration (FTA). The award of this Agreement is subject to a financial assistance Agreement between COTPA and the US Department of Transportation and/or any of COTPA's funding sources. The successful SERVICES PROVIDER will be required to comply with all terms and conditions prescribed for

third party Agreements. This Agreement is subject to annual reauthorization of funding. In addition, SERVICES PROVIDER shall be subject to all terms and conditions of Agreements between COTPA and any of its funding sources. In the event that COTPA is required to obtain funding approval prior to entering into the Agreement with SERVICES PROVIDER, the Agreement shall be deemed subject to the condition of funding approval, and the failure to obtain such approval, where required, shall terminate all SERVICES PROVIDER's rights hereunder and bar it from the right to any mortgage, lien, or other security interest in any way arising out of or relating to this project.

**11.13 Notices.** Notices which may or shall be given by either party to the other herein shall be in writing and by personal delivery or delivered by prepaid registered mail to the parties at the addresses set forth below. Notices shall be effective when received.

**If to SERVICES PROVIDER:**

President  
HMS Ferries, Inc.  
Pier 3, The Embarcadero  
San Francisco, CA 94111  
Phone: (718) 926-2862

Copy To: [legal@hornblower.com](mailto:legal@hornblower.com)

**If to COTPA:**

Administrator  
Central Oklahoma Transportation and Parking Authority  
2000 South May Avenue  
Oklahoma City, OK 73108  
Phone: (405) 297-3492  
Fax: (405) 297-2111

**With a copy to:**

Mr. Jonathan Garcia and Ms. Bailee Richards  
Assistant Municipal Counselors  
The City of Oklahoma City  
Office of the Municipal Counselor  
200 North Walker, Suite 400  
Oklahoma City, OK 73102  
Phone: (405) 297-1046  
Fax: (405) 316-1024

**Attachment A**

**Contractual Forms, Non-Collusion Affidavit, Non-Discrimination Statement**

**Attachment B**  
**FTA Clauses**

**Attachment C**  
**Certificate of Insurance**

**Attachment D**

**SCHEDULE OF DAILY FERRY SERVICE**

Ferry service is expected to run Wednesday through Sunday, April through November. Specific departure and arrival times will be assigned on an annual basis and with the approval of COTPA. In addition, charter service will be available seven (7) days per week and 362 days per year. Charter service will not be available on Christmas, Thanksgiving, and New Year's Day.

**Attachment E**  
**CLEANING STANDARDS**

**TRASH**

The vessel crew shall keep the vessel, ramps, barges, and queuing area clear of trash and debris by sweeping these areas throughout their shift. The trash will be placed in receptacles located on the vessel or the terminal landings. At the end of the day, all trash will be properly bagged and disposed.

**SPILLS**

The vessel crew will promptly cleanup any beverage spills on the vessel, ramps, barges, and passenger terminals within reasonable time of being notified of a beverage spill.

**WASHING OF BOAT**

The vessel crew will wash the boat with fresh water.

When the vessel is washed and scrubbed down, the soap used will always be a biodegradable detergent. The cabin windows will be cleaned every morning inside and out with an acceptable window cleaning solution. If during the course of the day the windows need to be touched up, the vessel crew will clean them again.

**SANITARY**

The vessel crew shall keep all crew spaces in a sanitary condition at all times, including but not limited to

sanitizing the vessel's head system, refrigerator and microwave area, wheelhouse, and interior cabin space.

The engine room decks will be kept clean and oil free at all times.

**FACILITIES**

The Operator will ensure that the maintenance building and all other land based facilities used by the

Operator remain clean and free of clutter.

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**Attachment F**  
**VESSEL MAINTENANCE SCHEDULE**

Diesel Engines

- a. Oil and filter changes for all engines will occur at 250-hour intervals or as otherwise required per engine manufacturer specifications. The marine gear clutches have oil changes at 1000-hour intervals as per manufacturer specifications. Oil samples are taken at each oil change interval and these samples are sent to a qualified **Oil** Analysis Laboratory for examination.
- b. Primary fuel filters are changed every two (2) months or as needed per fuel pressure indicators. Secondary fuel filters are changed at 1000-hour intervals or as needed.
- c. Air filters on the diesel engines are checked every 250 hours and cleaned or replaced at 1000-hour intervals.
- d. Filter storage:  
  
All used filters are stored in an approved waste oil drum and disposed of through a waste oil  
  
company.
- e. Fuel will be delivered to the vessel and transferred to the vessel at a dock provided by COTPA.
- f. The fuel sediment trap is checked weekly.
- g. The main shafts, bearings and steering are greased once a month with quarterly checks on the shaft alignment.
- h. Coolant is checked every two (2) months for anticorrosive levels and range of temperature.
- i. The engine alarms are tested daily and throughout the day.
- j. The Bilge alarms are tested weekly.

AUXILIARY EQUIPMENT

- a. The fire pumps and hoses are tested bi-weekly during scheduled fire drills. All hoses are rolled out and tested for holes or signs of wear. The hoses are pressurized, and the all-purpose nozzles tested for all positions and proper operation.
- b. Fire extinguishers are checked daily for safety pins, rust or any signs of wear. Any extinguishers with gauges are checked for proper pressure.
- c. All batteries (12 and 24 volt) are checked weekly for water and bi-weekly for specific gravity and proper voltage.
- d. The heating and air conditioner filters are changed monthly or as needed. The return air plenum is vacuumed, and the condenser coils washed. The blower belts are checked monthly for wear.
- e. The emergency lighting is checked monthly (12 and 24 volt).
- f. The bilge pump is operated each time the voids are pumped out.
- g. All electronic equipment is checked daily for proper operation.
- h. The sewage is held in a holding tank. The sewage tanks shall be pumped in an approved manner.
- i. A detailed maintenance logbook shall be kept, which is available for inspection at any time.

## CLEAN-UP

- a. The vessel will be cleaned daily as needed with fresh water and a biodegradable detergent.
- b. The windows are cleaned daily and throughout the day. The window seals are checked daily for dryness, cracking and tight seal.
- c. The trash will be removed daily.
- d. Rust spots are wire brushed, primed and painted to the original paint scheme.





**Attachment H**  
**Description and Diagram of Landings**  
**Attached**

**Attachment I  
Expense Operating Budget  
Calendar Year 2025**

<b>Management Fee</b>		\$202,709.24
<b>Employee Expenses</b>		\$491,665.46
<b>Operating Expenses</b>		
	<b>Facilities</b>	
	Telephone & Internet	\$16,000.00
	Advertising & Promotions	\$3,000.00
	Licenses & Permits	\$3,500.00
	Postage & Shipping	\$100.00
	Office Supplies	\$3,000.00
	Dues & Subscriptions	\$6,500.00
	Computer Equipment	\$1,000.00
	Ground & Facility Maintenance	\$10,000.00
	<b>Vessel Operations</b>	
	Recruiting & Training	\$1,000.00
	Vessel Repairs & Maintenance	\$35,000.00
	Food & Beverage	\$16,000.00
	Uniforms	\$2,000.00
	Vessel Supplies	\$2,000.00
	Insurance	\$44,000.00
<b>Total Expense Operating Budget</b>		<b>\$837,474.70</b>



APPROVED by the trustees of the Central Oklahoma Transportation and Parking Authority and signed by the Chairperson on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CENTRAL OKLAHOMA  
TRANSPORTATION AND  
PARKING AUTHORITY**

**ATTEST:**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Chairman**

Reviewed for form and legality.

  
\_\_\_\_\_  
**Assistant Municipal Counselor**